

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE**

June 15, 2005

IN RE:)	
)	
JOINT APPLICATION FOR EXPEDITED)	DOCKET NO.
APPROVAL OF THE TRANSFER OF ASSETS,)	05-00103
INCLUDING CUSTOMERS, OF ICG TELECOM)	
GROUP, INC. TO XSPEDIUS MANAGEMENT CO.)	
SWITCHED SERVICES, LLC AND XSPEDIUS)	
MANAGEMENT CO. OF CHATTANOOGA, LLC)	

ORDER APPROVING TRANSFER OF ASSETS

This matter came before Chairman Pat Miller, Director Deborah Taylor Tate and Director Sara Kyle of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on May 16, 2005 for consideration of the *Application for Transfer of Assets and Customer Base and Request for Expedited Treatment* (“Application”) filed by ICG Telecom Group, Inc. (“ICG”), Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Chattanooga, LLC (together, “Xspedius” and together with ICG, the “Applicants”). The Applicants sought approval of the transfer of certain Tennessee assets and Tennessee customer base pursuant to Tenn. Code Ann. § 65-4-112 (2004) and the Rules of the TRA.

Background

ICG, along with other subsidiaries of ICG Communications, Inc., specialize in providing voice and data services over a nationwide fiber optic data and voice network. ICG also offers a range of resold and facilities based services, and other communications services. By order dated

August 24, 1995 in Docket No. 93-07922, the TRA granted ICG the authority to provide telecommunications services in the State of Tennessee.¹

Xspedius is a wholly owned subsidiary of Xspedius Communications, LLC (“Xspedius Communications”). Xspedius Communications is a leading facilities-based provider of integrated telecommunications services to residential, small, and medium-sized business customers. Xspedius was authorized to provide interexchange and local exchange service by order issued August 28, 2003 in Docket No. 02-00714.²

Application

In the *Application* filed on April 18, 2005, the Applicants requested that the TRA approve a transaction involving the transfer of certain ICG assets, including most of ICG’s Tennessee customers, to Xspedius. The Applicants asserted that acquiring the ICG assets would allow Xspedius to combine its financial, technical and market resources and expertise with that of ICG, thereby enhancing the ability to provide reliable, competitively priced services to customers in Tennessee. Although most of the ICG customers in Tennessee will be transferred to Xspedius, ICG will continue to provide service to certain ICG nationwide customers, and therefore, will still operate on a limited basis in Tennessee, and does not seek to discontinue service or surrender its authorization to provide telecommunications in Tennessee. According to the Applicants, Xspedius has the requisite technical and managerial qualifications to provide telecommunications services in Tennessee.

¹ ICG Access Services, Inc. was granted a name change to ICG Telecom by order dated October 20, 1997 in Docket No. 97-01434

² In Docket No. 02-00714, the TRA approved a transfer of authority of American Communications Services of Chattanooga, Inc. and ASCI Local Switched Services, Inc. to Xspedius

According to the *Application*, this transaction is in the public interest and will be virtually transparent to ICG customers in terms of the services they receive, and the customers will not experience any interruption in service. Customers will continue to receive their existing services at the same rates, terms and conditions and any future changes in the rates, terms and conditions will be made consistent with Authority requirements. In addition, Xspedius will provide a toll-free customer service number for customer inquiries. The Applicants assert that the transaction will allow ICG to continue to implement its business strategies and that it will also strengthen competition in the Tennessee telecommunications market by strengthening Xspedius' position as an effective and multifaceted telecommunications carrier.

Statutory and Regulatory Framework

The Applicants submitted the *Application* pursuant to Tenn. Code Ann. § 65-4-112 (2004) and the rules of the TRA. Tenn. Code Ann. § 65-4-112(a) (2004) governs TRA approval of mergers or consolidations between two or more public utilities holding CCNs in the State of Tennessee. It provides as follows:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights, and franchises of any other such public utility of like character shall be valid until approved by the [A]uthority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

Additionally, Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d) sets forth the requirements applicable when a customer base is transferred between two or more telecommunications service providers. Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d) states:

- (d) In the case of a transfer of a customer base between two or more telecommunications service providers, the Authority, upon petition by the acquiring telecommunications service provider, may deem that sufficient notice has been given and approval received from the affected customers when the following criteria are met:

- ...
2. A notification letter, pre-approved by the Authority, shall be mailed by U.S. First Class Postage by the telecommunications service provider being acquired to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customers no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.

Subsections 3 and 4 of the Rule specify additional information that must be included in the notification letters:

3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2.56(2)(d)(2) shall inform the customer of this provision.
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter required in 1220-4-2.56(2)(d)(2) shall inform the customer of this provision.

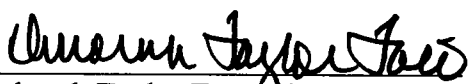
May 16, 2005 Authority Conference


At the regularly scheduled Authority Conference held on May 16, 2005, the Panel voted unanimously to approve the *Application* pursuant to a finding of compliance with the requirements of Tenn. Code Ann. § 65-4-112 (2004) and the Rules of the TRA. The Panel also approved the customer notification letter submitted by the Applicants to the Federal Communications Commission ("FCC") as a substitute for the TRA's notification requirement to avoid duplication and consumer confusion.

IT IS THEREFORE ORDERED THAT:

1. The Application is approved contingent on FCC approval of the transfer.
2. The transfer of certain assets from ICG to Xspedius as described in the *Application* and discussed herein, is approved contingent on FCC approval of the transfer.
3. The customer notification letter is approved pursuant to Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d)(2).


Pat Miller, Chairman


Deborah Taylor Tate, Director


Sara Kyle, Director